



# UNITED STATES PATENT AND TRADEMARK OFFICE

17  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,076	06/15/2001	Dhaval N. Shah	CISCP050C1	1504
5073	7590	06/05/2006	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980				WINDER, PATRICE L
		ART UNIT		PAPER NUMBER
		2145		

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/883,076	SHAH, DHAVAL N.	
Examiner	Art Unit		
Patrice Winder	2145		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 09 March 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 21-25 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 21-25 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a))

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## DETAILED ACTION

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 21-25 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 25-28, 30 of U.S. Patent No. 6,260,070 B1 in view of Rabinovich, USPN 6,256,675 B1 (hereafter referred to as Rabinovich).

3. Regarding claim 21, Patent '070 taught a system for selecting a mirrored service in a network environment (claim 25 - column 13, lines 23-24), the system comprising:

a director response protocol agent configured to receive a first border gateway protocol attribute related to a first mirrored service and a second border gateway protocol attribute related to a second mirrored service (claim 25 - column 13, lines 23-26);

a distributed director coupled to the first and second protocol agents to compare the first border gateway protocol attribute with the second border gateway protocol attribute (claim 25 - column 13, lines 27-28), resulting in a selected attribute, wherein the selected attribute meets a predetermined criteria, and wherein a mirror service associated with the selected attribute is selected (claim 25 - column 13, lines 29-32), wherein the first border gateway protocol attribute is a first multi-exit discriminator (claim 26 - column 13, lines 35-37).

The claims of patent '070 do not specifically recite a first border router and a second border router propagating border gateway protocol attributes. However, Rabinovich taught a first border router and second border router propagating border gateway protocol attributes (column 19, lines 20-61). It would have been obvious to one of ordinary skill in the art at the time the invention was made that incorporating Rabinovich's first and second border routers in Patent '070 would have provided a mechanism for retrieving border gateway protocol information. The motivation would have been because Rabinovich's makes the suggestion (column 19, lines 58-61).

4. Regarding dependent claim 22, Patent '070 taught the second border gateway protocol attribute is a second multi-exit discriminator (claim 27- column 13, lines 38-40).
5. Regarding dependent claim 23, Patent '070 taught the predetermined criteria is a smaller one of the first multi-exit discriminator (MED) and the second multi-exit discriminator (MED) (claim 28 - column 13, lines 41-43).
6. Regarding claim 24, Patent '070 taught a system for selecting a mirrored service in a network environment (claim 25 - column 13, lines 23-24), the system comprising:

a director response protocol agent configured to receive a first border gateway protocol attribute related to a first mirrored service and a second border gateway protocol attribute related to a second mirrored service (claim 25 - column 13, lines 23-26);

a distributed director coupled to the first and second protocol agents to compare the first border gateway protocol attribute with the second border gateway protocol attribute (claim 25 - column 13, lines 27-28), resulting in a selected attribute, wherein the selected attribute meets a predetermined criteria, and wherein a mirror service associated with the selected attribute is selected (claim 25 - column 13, lines 29-32), wherein the first border gateway protocol attribute is a community attribute (claim 30 - column 13, lines 46-47).

The claims of patent '070 do not specifically recite a first border router and a second border router propagating border gateway protocol attributes. However, Rabinovich taught a first border router and second border router propagating border gateway protocol attributes (column 19, lines 20-61). It would have been obvious to one of ordinary skill in the art at the time the invention was made that incorporating Rabinovich's first and second border routers in Patent '070 would have improved system utility by providing a mechanism for retrieving border gateway protocol information. The motivation would have been because Rabinovich's makes the suggestion (column 19, lines 58-61).

7. Regarding dependent claim 25, Patent '070 taught the predetermined criteria is a predetermined community attribute (claim 30 – column 13, lines 46-47).

***Response to Arguments***

8. Applicant's arguments with respect the double patenting rejection to claims 21-25 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrice Winder whose telephone number is 571-272-3935. The examiner can normally be reached on Monday-Friday, 10:30 am-7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Patrice Winder  
Primary Examiner  
Art Unit 2145

May 27, 2006